

SUPPORTING PROPOSED REGULATIONS TO THE PUBLIC SAFETY OFFICERS' BENEFIT PROGRAM

HON. DONALD A. MANZULLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 2008

Mr. MANZULLO. Madam Speaker, I rise to recognize the Department of Justice for recently proposed regulations relating to the Public Safety Officers' Benefit Program. The program provides death benefits for the survivors of public safety officers who die in the line of duty; and disability benefits to those officers who have been permanently and totally disabled by a catastrophic personal injury sustained in the line of duty, and thereby prevented from performing any gainful work; and also educational assistance benefits for surviving family members. Among other things, these proposed regulations will help to shore up the program against fraud and abuse by clarifying the requirements for certifications and their effect. I strongly support the mission of the Public Safety Officers' Benefit Program, and I commend the Department of Justice for keeping the regulations up to date and for taking action to ensure that the funds available go to those public safety officers (and their survivors) that deserve them. I would like to take a moment to comment on the statutory predicate for some of these regulations.

As the Ninth Circuit Court of Appeals recognized, Public Law 94-430 creates a "limited program," whose principal purpose is to help ensure that the families of "public" officers be protected from financial calamity that is likely to result from the death or permanent and total disability, in the line of duty, of the primary money-maker. The statute (including the two parallel 2001 benefits statutes, which do not, strictly speaking, amend the Public Law or directly affect the precise program it creates) enshrines various and competing policy considerations and purposes that it proposes to achieve by particular means that have been worked out, over the last 30 years and more, in the legislative process. Because no law pursues its ends at all costs, the limitations expressly or implicitly contained in its text and structure are no less an articulation of its purposes (and the intent, goals, and policies that inform it), than its substantive grants of authority are. Benefits under these statutes—charges on the public fisc—are to be granted fairly, but not speculatively, or beyond what the statutory language unequivocally requires and unequivocally expresses, or beyond the letter of the difficult judgments reached in the legislative process and clearly reflected in the statutory text. It is precisely to enable the Department to balance and harmonize these various considerations into a single workable and coherent program that the law confers extraordinary administrative and interpretive authority on the Department. For example, at least seven distinct statutory provisions—42 U.S.C. 3796c(a) (twice), 3796(a) & (b), 3796d-3(a) & (b), 3782(a)—expressly authorize the Department to issue program regulations and policies here, and the law expressly provides that those regulations and policies are determinative of conflict of law issues relating to the program, and that responsibility for making final determinations shall rest with the Department. Under the Public Law (as under the parallel

2001 statutes), the very right to a death or disability benefit, which the Supreme Court correctly has recognized as a legal "gratuity" (and thus not "remedial" in nature), is not freestanding, but contingent, rather, upon a determination by the Department.

When Public Law 94-430 was enacted in 1976, only the Circuit Courts or the old Court of Claims (of similar rank) heard appeals from final rulings of the Department of Justice thereunder, which meant that only one level of judicial review ordinarily was available to claimants and the Department, alike. In 1982 (when the appellate functions of the Court of Claims generally were merged into the newly-created Court of Appeals for the Federal Circuit), jurisdiction over these appeals—apparently as a result of an oversight—was not transferred to the Federal Circuit, and thus (unlike the case with other administrative appeals, see, e.g., 28 U.S.C. 1295, 1296), by default, lay in what is now the Court of Federal Claims, established under Article I of the Constitution, rather than Article III, with an additional level of appeals available in the Federal Circuit. Although there are notable and distinguished exceptions, over the past decade or so, many of the Federal Claims Court's rulings on these appeals applied the law incorrectly, sometimes disregarding the express terms of the relevant statute or implementing regulations, or binding and applicable Federal Circuit/Court of Claims precedent, and even Supreme Court precedent. To order the administering agency to pay on a claim when payment is not clearly warranted by the programmatic statutes and their implementing regulations and administrative interpretive superstructure is as much an affront to the law as for the agency not to pay when payment is clearly required by those statutes and regulations.

Overall, the 16 opinions issued to date by the Federal Circuit (and its predecessor) under the statute indicate a proper understanding of the law and the application of the Chevron doctrine to the Department's determinations. (All but two of these opinions were affirmances of the administering agency; in *Demutiis*, the agency was affirmed on all points but a very minor one (relating to application of a (now-repealed) regulation), and the 1980 holding in *Harold*, which reversed the Department's determination, itself soon thereafter was rendered moot, as a practical matter, by a statutory amendment consonant with the Department's position.) For these reasons, the corrective proviso in the consolidated appropriations legislation, entrusting judicial appeals under Public Law 94-430 (and the two 2001 statutes) exclusively to the Federal Circuit (and returning to a single level of judicial review, as originally intended) should further the purposes of the program, reduce litigation costs for claimants and the taxpayers, and serve the interests of justice.

HONORING THE LIFE AND MUSIC OF THE LATE ISAAC HAYES

SPEECH OF

HON. SHEILA JACKSON-LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 2008

Ms. JACKSON-LEE of Texas. Mr. Speaker. I thank the gentlewoman from Tennessee for

introducing this resolution. I rise today to show support for House Resolution 1425, honoring the life and music of the late Isaac Hayes.

Mr. Hayes's absence will be felt by millions around the world. A prolific hall of fame songwriter, a fighter for civil rights and an entertainer to millions throughout his life, I ask that Congress now honor his life and his achievements.

Isaac Hayes's life should serve as an example to us all. Being orphaned shortly after his birth, Mr. Hayes started a lifelong trend of overcoming adversity. His grandfather, who was taking care of him, died when Isaac was only 11 years old. Wanting to contribute to his family, he took odd jobs around town to help his grandmother out.

His love of music started when he was only 5 years old. Turned on to music by singing at his church, he taught himself to play multiple instruments. Soon, he was singing backup to bands and it wasn't long before he would be out on his own singing and producing other young aspiring artists.

His civil rights credentials weren't too shabby either. In 1972, he helped stage a concert in Los Angeles that focused on social and economic issues. Never forgetting his roots, this concert also brought attention to his hometown Memphis sound.

Isaac Hayes was the best among us. His strength and character are a beacon of light for us all. This legislation will honor the life of one of the great ones of our time.

RECOGNIZING JOSEPH STALNAKER AND THE PAWS WITH A CAUSE ORGANIZATION

HON. HARRY E. MITCHELL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 2008

Mr. MITCHELL. Madam Speaker, I rise today to recognize Joseph Stalnak and the Paws with a Cause organization. On the morning of Wednesday, September 13, 2008, Mr. Stalnak suffered a seizure as a result of an injury he received while serving in the U.S. military. While Mr. Stalnak was unable to help himself, his trained service dog, Buddy, managed to place the 911 call that saved his life. He had adopted Buddy from Paws with a Cause a year earlier.

The Paws with a Cause organization trains seeing eye and service dogs to be placed for adoption by people with disabilities. They are the nation's largest non-profit group providing service dogs trained especially to handle people with seizure-related disorders. Their goal is to not only assist people with serious disabilities, but to encourage them to be able to live independently. Paws with a Cause purveys a message of awareness through education, and provides service dogs to its clients free of charge.

Through these advocacy programs, people with disabilities like Joseph Stalnak, who bravely served our country, are able to live independently. The Paws with a Cause program tirelessly serves the community, providing both aid to those with disabilities, and providing homes to many dogs that would not otherwise have these opportunities.

Madam Speaker, please join me in recognizing the Paws with a Cause organization